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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION TWO

W.W.,

Petitioner,

v.

THE SUPERIOR COURT OF  
HUMBOLDT COUNTY,

Respondent;

HUMBOLDT COUNTY DEPARTMENT  
OF SOCIAL SERVICES et al.,

Real Parties in Interest.

A157048

(Humboldt County  
Super. Ct. No. JV170220)

W.W. (mother) petitions for extraordinary relief, seeking to reverse a juvenile court order in a dependency proceeding initiated on November 1, 2016, with respect to her now three-year-old daughter, M.S., and to stay a permanency planning hearing under Welfare and Institutions Code section 366.26<sup>1</sup> that the court set for August 19, 2019. The order, issued after a contested disposition hearing on a supplemental petition under section 387, terminated reunification services and set the case for a permanency planning hearing. Mother portrays herself as having made strong and successful efforts to reunify and argues that the Humboldt County Department of Health & Human Services, Child Welfare Services Division (Agency) failed to provide her adequate services, that the Agency social worker perjured himself at the hearing and his testimony and reports

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

should have been disregarded, and that the Agency's failure to provide certain discovery mother had not sought until after the close of evidence deprived her of effective assistance of counsel. None of mother's arguments has merit, and we therefore deny the writ.

### **BACKGROUND**

M.S. was born in 2015. At birth, she and mother tested positive for opiates, and mother had used methamphetamines throughout her pregnancy and received no prenatal care. Allegations of general neglect were substantiated, the parents agreed to engage in public health nurse services and a dependency referral was closed.

By November 2016, when M.S. was less than a year old, she was removed from the care of her mother and her father (father). The Santa Clara County Sheriff's Office had stopped the family for a Vehicle Code violation and discovered them living in their car in an unsafe and unsanitary environment, which included M.S.'s exposure to drugs and drug paraphernalia.

According to a dependency petition filed by the Santa Clara County Department of Child and Family Services (DCFS) in Santa Clara County Superior Court, besides the unsafe conditions in the car, mother was using methamphetamines regularly, had a drug problem, had not sought treatment and had M.S. in her care while under the influence of drugs. Father was also using methamphetamines, had prior convictions for driving under the influence and misdemeanor cruelty to child with possibility of injury or death, and had lost custody of his three older children. The juvenile court in Santa Clara County found DCFS's allegations true, declared M.S. a dependent and ordered reunification services, including parenting classes, drug testing and substance abuse assessment and treatment, be provided to both parents. M.S. was placed with father's cousin, Wendy S., in Fairfield, California at father's suggestion. Mother did not object to this placement. At the six-month review hearing in August 2017, after DCFS reported that mother had participated in services and made substantial progress, M.S. was returned to mother's care, with continued supervision by DCFS.

The following month, mother relocated to Humboldt County, and the Santa Clara County juvenile court transferred the dependency matter to the Humboldt County juvenile court. After relocating, mother failed to obtain employment or stable housing, was minimally engaged in services, was not in regular contact with her social worker, was not regularly engaging in random drug testing and had one negative and one positive drug test. Nonetheless, M.S. was doing well, and in a status review report the Agency recommended continuation of family maintenance services for another six months. After hearing, the juvenile court ordered this in March 2018. At the same time, the court terminated father's reunification services, and father did not seek review of that decision. We mention father further only as relevant to mother's writ petition.

A month after the March 2018 order, the Agency received a referral that the parents and M.S. were living together in a car, going from one drug house to another and living at a "marijuana grow" property where sometimes there was no water or electricity. The reporting party informed the Agency there had been an altercation between mother and father in which mother had shattered the windshield of the car, that M.S. was never dressed appropriately and was always dirty, that there was no car seat for her and that she had broken her arm under circumstances the parents could not explain. After the social worker spoke with mother, who claimed she had only seen father to discuss visitation with M.S., the Agency received another referral reporting that the family was illegally squatting on property in Trinity County that was not fit for habitation, father had been seen riding around on a four-wheeler with a half-naked two-year-old child, mother and father were using drugs and the caller had reported them to Trinity County Social Services.

The Agency's social worker spoke with a Trinity County social worker who had received a similar referral and been told that the home on the Trinity property had no front door, no water and no power and was "trashed," "there were lots of druggies hanging out" and the child was found walking alone on a dirt road. Trinity County social workers and a sheriff visited the property and found hatchets, barbed wire and other sharp objects, an unfenced pond, moldy food, a broken meth pipe and marijuana, all

of which posed safety hazards to M.S. Neighbors expressed concern about M.S., whom they described as filthy, and said they had heard the parents arguing and mother yelling at father that their child is starving.

Trinity County Child Welfare Services obtained a protective custody warrant for M.S. but could not find mother or child. Trinity County social workers later found M.S. and took her into protective custody, after which the (Humboldt County) Agency filed a supplemental petition under Welfare and Institutions Code section 387. In it, the Agency informed the court what had transpired and that despite almost 18 months of services, the parents were unable to keep M.S. safe. The court ordered M.S. detained and placed in a suitable foster home or with a suitable relative, in or out of county. It ordered reunification services for mother and father, including a parent education program, random drug testing, substance abuse assessment and treatment and domestic violence counseling.

Between the detention and jurisdiction hearings on the section 387 petition, mother committed acts of violence against father and was arrested for assault and battery, violated a stay away order, missed a drug test and admitted that it would reveal use of drugs, refused to obtain an alcohol and drug assessment and tested positive for drugs. Meanwhile, while in foster care in Trinity County, M.S. injured her ankle playing on a trampoline, was treated but then developed a fever and rash and was diagnosed with septic arthritis and transferred from Mercy Medical Center in Redding, California, to UC Davis Medical Center. The Agency changed M.S.'s placement so that when she was released from UC Davis Medical Center she would be placed with Wendy S., the paternal cousin with whom she had been placed shortly after her initial detention. Wendy, with whom M.S. had spent eight months of her young life, lived in Fairfield, which was near the UC Davis Medical Center.

Mother went to Davis to visit M.S. in the hospital. There, a social worker observed fresh puncture wounds on the inside of mother's arm by the joint. The Agency contacted mother and asked her to drug test, which she did. The test was positive for opiates.

Mother did not want M.S. placed with father's relatives, including Wendy, and suggested she be placed instead with a friend of mother's. After a two-day contested jurisdictional hearing, the juvenile court sustained the supplemental petition.

Prior to the contested disposition hearing, the Agency reported on the entire history of the dependency case, noting M.S. had been "exposed to her parent[s'] drug use throughout her life, including being born positive for opiates, being found in the family vehicle by law enforcement with access to a methamphetamine pipe and baggie of methamphetamine and living in unsafe conditions during her parent[s'] most recent relapse." The Agency expressed concern that the parents would continue to abuse drugs and be unable to make a safe plan for M.S. if they experienced relapse with the potential for her to suffer serious injury, illness or death. It informed the court that mother and father had "only made minimal progress in addressing their substance abuse issues" and that "[M.S.] cannot be returned safely to their care at this time." The Agency recommended that further reunification services not be offered to the parents because the time period for provision of services had expired, mother having received almost 24 months of services. Although mother had recently re-engaged in alcohol and drug services, that "recent engagement," in the Agency's view, was "insufficient to support reunification at this time," given mother's "lengthy history of AOD abuse" and delay in "signing up or following through for months when the services were available to her." After having been in the dependency system for two-thirds of her life and "placed in four different placements,"<sup>2</sup> M.S.'s best interests would be served by ordering a permanent plan of adoption. Wendy, with whom M.S. had previously spent eight months and with whom she was also currently placed, was interested in adopting M.S. M.S. was still unable to walk without a walker and continued to be treated through UC Davis. She was enrolled in a swimming program, which her physician had recommended.

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<sup>2</sup> On the first removal from her parents, M.S. had been in an overnight placement when first detained, then placed with a foster family, and then with Wendy. On the second removal, she was initially placed with a foster care provider in Trinity County, and then with Wendy a second time.

After the five-day contested disposition hearing, the Humboldt County juvenile court issued an order detailing the history of the case and observing the following: At the time of removal on the supplemental petition, the 12-month period for reunification had already passed. As of the date of the order, the case had been in the system for 28 months, and M.S. had been in out-of-home care for almost half her life. The mother's position now was "almost identical to mother's position when her case first began." And "[t]he problem is that the mother does not believe she has a problem." She did well when engaged in services but none of the successes she achieved while in Santa Clara County had continued when she returned to Humboldt County. Although mother was "intelligent and engaged; unfortunately, she focused on blaming others and no real change." The time for providing services to mother had come and gone, and legally she was not entitled to additional services. She had received reasonable services throughout the dependency. The court found that placement with the mother had been "ineffective in protecting the child" and that "there is a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child or would be if the child were returned home, and there are no reasonable means by which the child's physical health or emotional health can be protected without removing the child from the physical custody of the child's mother and father." The mother's progress toward alleviating or mitigating the causes necessitating placement during the most recent detention had been adequate. And the Agency had, the court found by clear and convincing evidence, complied with the case plan and made reasonable efforts to eliminate the need for M.S.'s removal from her parents and return her to a safe home or finalize a permanent plan for her. The court ordered no further reunification services would be provided to the parents. The court ordered adoption as the permanent plan and set a section 366.26 hearing for August 2019. Mother then filed this writ petition challenging the disposition order.

### **DISCUSSION**

Mother challenges the juvenile court's order on three grounds. First, she challenges the court's finding that the Agency provided reasonable services, contending that the distance she was required to travel to visit M.S. in Fairfield, where she was

placed with Wendy, was not reasonable.<sup>3</sup> Second, she contends the court erred in relying on the Agency social worker's testimony because, according to mother, the social worker perjured himself while testifying. Third, she contends she was denied effective assistance of counsel because the Agency and its counsel failed to provide her with certain discovery. We address each of these arguments in turn.

As to the reasonable services finding, we review such findings for substantial evidence, "review[ing] the evidence most favorably to the Agency which is the prevailing party, and indulg[ing] all legitimate and reasonable inferences to uphold the trial court's order." (*Patricia W. v. Superior Court* (2016) 244 Cal.App.4th 397, 419–420.) Reasonable services "need only be reasonable under the circumstances, not perfect." (*In re H.E.* (2008) 169 Cal.App.4th 710, 725.)

Here, the circumstances were that M.S. had contracted a serious infection, a form of sepsis that infiltrated her bone and potentially could result in an amputation. The hospital in the vicinity of where mother had been living transferred M.S. to UC Davis Medical Center; local hospitals could not provide the treatment she needed. The Agency arranged to place three-year-old M.S. with Wendy, with whom she had previously been placed for eight months early in the dependency proceedings. Further, M.S.'s condition was potentially life threatening and she would need to be near the UC Davis Medical Center even after she was released from the hospital. Wendy lived in Fairfield, which is near Davis, where the medical center is located. Under these circumstances, the Agency and the trial court reasonably could have concluded that the requirement that mother

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<sup>3</sup> Under the heading "The Court's Finding That Reasonable Services Were Provided To Mother When Her Once Weekly Visits Occurred Between 8-13 Hours From The Mother And Child's County Of Residence Was Error," mother complains about the distance she had to travel. Her argument winds around, touching down on various topics, such as whether the 24-month statutory limit on services is "inflexible and rigid," that mother did well while the case was pending in Santa Clara County and various other topics, none of which appear relevant to the substantial evidence issue she raises. We address only the primary argument because none of the others is at all developed or supported by citations to the record or authorities.

travel 300 miles to visit M.S. was not unreasonable. They could reasonably have viewed M.S.'s emotional and medical needs, including to be placed with a person she knew and who could continue to attend to her treatment at UC Davis, as outweighing the inconvenience to mother of having to travel, even a long distance. And, indeed, the record shows that mother was able to visit M.S. in Fairfield throughout the period in question, missing only a few visits, and that the Agency provided her funds for travel and hotel, albeit sometimes after the visits. In short, mother's contention that the travel required to visit M.S. rendered the services the Agency provided unreasonable is based on a failure to consider the circumstances that required the travel. In effect, mother is asking us to reweigh the evidence, which is not our role on substantial evidence review. (*In re Caden C.* (2019) 34 Cal.App.5th 87, 106; *In re A.S.* (2011) 202 Cal.App.4th 237, 244.)

Mother's second argument is that the trial court erred in crediting the testimony of the Agency social worker, who she contends committed perjury while testifying. He testified that he had considered M.S.'s maternal grandfather and his partner (grandparents) as a potential placement and had contacted them, but they had been going through a difficult time with deaths of loved ones. The grandparents testified that the social worker had never contacted them.

It was for the juvenile court to assess whether the social worker "lied," as mother contended, or was simply mistaken in his testimony. Credibility determinations are for the trial court, and on substantial evidence review we will not second-guess the trial court's decision based on mother's claim that the social worker was not credible. (*In re Caden C.*, *supra*, 34 Cal.App.5th at p. 106; *In re A.S.*, *supra*, 202 Cal.App.4th at p. 244.)

Mother's final argument is that the Agency's and its attorney's failure to provide her with delivered service logs (DSLs) prior to the close of evidence denied her effective assistance of counsel because the logs reflected no contact between the social worker and the grandparents and could have been used to cross-examine the social worker. The Agency responds that mother's counsel did not request the DSLs until after the close of evidence. Further, the Agency argues, the court already had before it the grandparents'

testimony that the social worker did not contact them, and the DSLs would only have been duplicative. Thus, mother was not prejudiced by the failure.

We have reviewed the record and agree with the Agency. Mother's counsel only requested the records after the close of evidence, and the Agency then provided them. Further, to the extent the DSLs reflected, as apparently was the case, no direct contact between the social worker and the grandparents, reopening cross-examination of the social worker to impeach him on the point with the DSLs would have been duplicative, given the grandparents' testimony. And finally, the DSLs were not inconsistent with the social worker having been mistaken; as mother's counsel admitted, the social worker had many contacts with M.S.'s caretaker, who in turn was in frequent touch with the grandparents, and one of the grandparents had spoken to Wendy about the deaths of her friends. The social worker may have believed he contacted the grandparents because there was information about them in his reports even though the information may in fact have come from his contacts with Wendy.

Because the trial judge heard the testimony of the social worker and the grandparents, as well as the representation by mother's counsel that the DSLs did not show contact between the two, the judge was able to assess whether this was a case of inaccurate memory or deliberate falsehood, and in either event, to assess the social worker's credibility in light of it. In short, mother was not deprived of effective assistance of counsel because County Counsel did not produce the logs prior to mother's counsel having requested them. And while mother does not clearly argue that it was her counsel who was ineffective for not requesting them earlier, if this were her argument, it would fail for the reasons we have already discussed; there was no dearth of evidence on the point and no likelihood the court would have reached a different conclusion if the DSLs had been produced. This is particularly clear because the trial court found by clear and convincing evidence that return of M.S. to her mother and father created "a substantial risk of detriment" to her "safety, protection, or physical or emotional well-being" and that placement with mother had been "ineffective in protecting the child," and mother has not challenged those findings. Further, the juvenile court held that because

the dependency case had been in the system for 28 months, there was no statutory basis for extending further services. (See § 361.5, subd. (a)(1)(B) [for child removed when she is under three years of age, services shall be provided for no longer than 12 months unless child is returned to home of parent]; *id.*, subds. (a)(3)(A) and (a)(4)(A) [exception allowing services to be extended up to maximum not to exceed 18 and 24 months, respectively, after child was originally removed from parental custody if (a) permanent plan is for child to be returned and safely maintained in the home within the extended time period or (b) reasonable services were not provided].) Again, mother does not challenge this ruling. In short, mother has failed to establish error, much less any prejudice resulting from the claim of error she asserts.

Finally, we observe that mother's petition continues to paint a picture of mother as "a 'rock star' . . . with respect to compliance with her case plan." In doing so, she ignores the abundant evidence in the case of her prior serious drug use, multiple relapses, and that the relapses led to her and father putting their very young child at risk of serious harm through neglect and the appalling conditions in which they and M.S. lived. While it is true that mother apparently was not using during the last two or three months of the final reunification period and made efforts to engage in services during that period, that did not suffice to persuade the juvenile court that she was ready or near ready to safely parent M.S. in view of the entire history of the case. In short, the juvenile court was correct in its observation that after 28 months of services mother had failed to come to grips with the problem and continued to blame others while making no real change. The court and the Agency gave these parents multiple opportunities to resolve the problems that led to the dependency, and the court's findings mother failed to do so is amply supported by the record.<sup>4</sup>

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<sup>4</sup> After the petition was fully briefed, mother submitted a letter "in lieu of a request to augment the record," with exhibits that were not before the juvenile court when it issued the ruling that is the subject of the petition. The Agency opposed mother's request. We do not consider these materials in addressing mother's writ petition. (Cf. *In re Zeth S.* (2003) 31 Cal.4th 396, 413 [consideration of postjudgment evidence of changed circumstances in appeal from order terminating parental rights to reverse

## **DISPOSITION**

The petition is denied on the merits. Our decision is final as to this court immediately. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

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juvenile court judgment and remand case to juvenile court violated rules of appellate procedure and scope of review of orders terminating parental rights].) Mother is not precluded from bringing these matters to the attention of the juvenile court in connection with further proceedings in that court.

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STEWART, J.

We concur.

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RICHMAN, Acting P. J.

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MILLER, J.

*W.W. v. Superior Court* (A157048)